



October 30, 2001

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-4971

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154103.

The City of Houston (the "city") received a request for the application file for minority certification submitted by Professional Logistics Management Company, Inc. (the "company"). You claim that the submitted application is excepted from disclosure under sections 552.101 and 552.128 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.128 of the Government Code protects the interests of historically underutilized and disadvantaged businesses. Section 552.128 provides in pertinent part:

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.

(b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

¹You claim section 552.101 in your letter dated August 24, 2001. However, in your letter dated September 5, 2001, you only provide written comments for the applicability of section 552.128. See Gov't Code § 552.301(e)(1)(A) (providing that governmental body must submit written comments stating the reasons a stated exception applies). Thus, we are only addressing section 552.128 in this ruling.

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

You explain that the application was submitted by the company as part of the process to become certified with the city as a women business enterprise and disadvantaged business enterprise. The requestor states that he and his wife were shareholders in the company at the time of the application. Further, the application reveals that the requestor was a 20 percent owner of the company at the time of the application. The requestor states that the president of the company at the time of the application resigned and that he is now the president of the company. You seek our guidance as to whether the requestor is entitled to access to the application file.

The purpose of section 552.128 is to protect the "personal" information individuals must submit to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business. *See* Debate on Tex. H.B. 625 on the Floor of the Senate, 75th Leg., R.S. (May 20, 1997) (transcript available from Senate Staff Services Office). We, therefore, conclude that the primary purpose of section 552.128 is to protect the privacy interests of individuals who must submit financial and other information regarding their businesses to governmental bodies. Thus, if the requestor in fact is now the owner of the corporation, he would have a special right of access to the information at issue. *See* Gov't Code § 552.023 (granting person right of access to information about that person where another law protecting information is intended to protect that person's privacy interests). Consequently, if the city determines that the requestor is now the owner of the corporation, we conclude that the city must release the records at issue to the requestor pursuant to section 552.023 of the Government Code. On the other hand, if the city determines that the requestor is not the owner of the corporation, the city must withhold the submitted information under section 552.128 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 154103

Enc: Submitted documents

c: Mr. David L. Meek
President
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(w/o enclosures)